



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 05-0005

IN THE MATTER
OF
ROBERT C. TINKHAM Jr.

DISPOSITION AGREEMENT

The State Ethics Commission and Robert C. Tinkham Jr. enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 3, 2004, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Tinkham. The Commission has concluded its inquiry and, on June 2, 2005, found reasonable cause to believe that Tinkham violated G.L. c. 268A.

The Commission and Tinkham now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Tinkham has been the full-time Carver health agent since August 1994, appointed by the Carver Board of Health ("BOH").
2. Tinkham's parents own and operate the Pinewood Way Camping Area ("the campground") in South Carver, Mass. The campground business is incorporated as the Pinewood Way Camping Area, Inc., of which Tinkham's mother and brother are corporate officers and directors, and Tinkham himself is a corporate director.
3. The campground contains approximately 46 acres of land with 80 campsites.
4. When the BOH appointed him as health agent in 1994, Tinkham informed the BOH that he was then managing his family's campground.
5. In or about March 1995, Tinkham informed the BOH that he would no longer manage the campground, but that his family would continue to own and operate it. Tinkham and the BOH agreed that any inspections that Tinkham performed at the campground would be done with a BOH member present.
6. Thereafter, the BOH chair accompanied Tinkham on his annual inspections of the campground.

7. In or about 2002, the campground was required to upgrade its septic systems pursuant to Title 5 of the state environmental code, 310 CMR 15.000.

8. Title 5 of requires that a qualified soil evaluator conduct soil percolation tests “in the presence of an authorized representative of the approving authority” before applying for a permit to install or upgrade a septic system. Absent a successful percolation test, the BOH (the approving authority) cannot issue a permit for a new septic system.

9. The campground hired an engineer to design the new septic systems.

10. On November 30, 2002, the engineer conducted five soil percolation tests at the campground.

11. In his capacity as the health agent, Tinkham witnessed the five soil percolation tests on behalf of the BOH to make sure that the tests were correctly performed. Tinkham was not accompanied by a BOH member.

12. In January 2003, the engineer applied to the BOH for permits to install five new septic systems at the campground. Included with the applications were the engineer’s soil suitability reports, which noted that Tinkham had witnessed the tests as the health agent acting on behalf of the BOH.

13. The BOH approved the applications and issued the permits.

14. Subsequently, the hired installer began the system upgrade work pursuant to the permits.

15. Title 5 also requires that, “Subsurface components of a system shall not be backfilled or otherwise concealed from view until a final inspection has been conducted by the approving authority and permission has been granted by the approving authority to backfill the system.”

16. On April 16, 2003, prior to the installer’s backfilling the campground’s five newly installed septic systems, Tinkham inspected the installation work and authorized its completion in his capacity as health agent acting on behalf of the BOH. Tinkham was not accompanied by a member of the BOH when he performed the inspections.

17. Thereafter, Tinkham, in his capacity as health agent acting on behalf of the BOH, submitted five Sewerage System Inspection Reports to the BOH, signifying that he had inspected the new systems and authorized completion of the work.

18. Tinkham also signed the five certificates of compliance as the “Inspector,” signifying that the new systems had been installed in compliance with Title 5 of the state environmental code.

Conclusions of Law

19. As the Carver health agent, Tinkham was a municipal employee within the meaning of G.L. c. 268A.

20. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he, his immediate family or a business organization in which he is serving as a director has a financial interest.

21. The applications for BOH permits regarding the installation of new septic systems at the campground, and the determinations regarding the installation, inspection and approval of those new systems, were particular matters.¹

22. Tinkham participated² as the health agent in those particular matters by witnessing the five soil percolation tests, inspecting the five newly installed septic systems, authorizing completion of the work, and signing the five certificates of compliance.

23. As the campground owners, Tinkham's parents, his immediate family,³ had financial interests in those particular matters.

24. In addition, the campground corporation, which was a business organization in which Tinkham served as a director, had financial interests in those particular matters.

25. When he participated in the particular matters, Tinkham knew that his parents and the campground corporation had financial interests in the particular matters.⁴

26. Therefore, by acting as described above, Tinkham violated § 19.

27. The Commission is not aware of any evidence indicating that Tinkham was improperly influenced in witnessing the soil percolation tests or inspecting the septic systems, or that he misrepresented information in his reports. Nevertheless, Tinkham's violations are serious where they involve public health issues. Moreover, where his own family's money was at stake, Tinkham could have been tempted to act improperly, even though there is no evidence that he did. Finally, the Commission notes that the BOH had instructed Tinkham to have a BOH member present when performing annual inspections at the campground, but Tinkham failed to do so during the above-noted tests and inspections.⁵

-Resolution-

In view of the foregoing violations of G.L. c. 268A by Tinkham, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Tinkham:

- (1) that Tinkham pay to the Commission the sum of three thousand dollars, (\$3,000.00) as a civil penalty for repeatedly violating G. L. c. 268A § 19; and
- (2) that Tinkham waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: January 4, 2006

¹ “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

² “Participate,” participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

³ “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters.

⁴ For example, had Tinkham determined that the septic systems did not comply with the state environmental code, his parents and/or the campground corporation would have had to expend additional money to bring the septic systems into compliance. In the alternative, had Tinkham determined that the septic systems did comply when they in fact did not, his parents and/or the campground would have avoided having to spend money to bring the septic systems into compliance.

⁵ The conflict-of-interest law recognizes that it may be necessary or appropriate for municipal employees, on occasion, to participate in matters that affect their immediate family's financial interests. The law, however, places strict written disclosure and determination requirements on a municipal employee and his appointing authority, thereby ensuring that any such participation is allowed only if, in the appointing authority's view, it is consistent with the public interest. See G.L. c. 268A, § 19(b)(1). Tinkham never sought the BOH's approval and, given the BOH's requirement that he be accompanied by a BOH member when conducting inspections at the campground, it is the Commission's view that such approval would not likely have been granted. Tinkham believes that the BOH would have granted him the approval.